

11-00245

**AGREEMENT FOR FUNDING
SUPPLEMENTAL ENVIRONMENTAL PROJECT**

This Agreement for Funding Upper Santa Clara River Watershed Area Supplemental Environmental Project ("Agreement") is dated July 26, 2011 and is between SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY, a county sanitation district organized and existing under the provisions of the California Health and Safety Code sections 4700 *et seq.* (the "District") and the CITY OF SANTA CLARITA, a municipal corporation (the "City"). In this Agreement, the District and the City are referred to individually as a "Party" and collectively as "the Parties."

The District has been served with a Notice of Violation under California Water Code Section 13385 ("NOV"). In order to settle the NOV, the District intends to enter into a Stipulation for Entry of Proposed Order ("Stipulation for Proposed Order") with the Executive Officer and Prosecution Team of the California Regional Water Quality Control Board – Los Angeles Region ("Regional Board"). The terms of the Stipulation for Proposed Order will be submitted to the Regional Board for approval and implementation through the issuance of a Supplement Environmental Project Order by the Regional Board ("SEP Order").

The Stipulation for Proposed Order provides for the District, among other things, to contribute the sum of \$97,500 (the "District's SEP Contribution") to a supplemental environmental project. The City is willing to administer the Upper Santa Clara River Watershed Area E Arundo Removal Supplemental Environmental Project (the "Arundo SEP"), in accordance with the State and Regional Boards' requirements for such projects.

The District and the City wish to provide for the District's SEP Contribution to the Arundo SEP upon the issuance of a SEP Order that includes this contribution.

The Parties therefore agree, as follows:

1. The District's SEP Contribution. Upon execution of this Agreement and the Stipulation for Proposed Order, and upon issuance of the SEP Order, the District shall pay the District's SEP Contribution to the City to fund the Arundo SEP. The District's SEP Contribution may be made by special warrant or wire transfer. The City shall issue a written notification to the Regional Board, as directed by the District, of its receipt of the District's SEP Contribution.

2. The City's Use of the District's SEP Contribution. The City shall use the District's SEP Contribution to complete the Arundo SEP. Any Arundo SEP expenses beyond the District's SEP Contribution will be the sole responsibility of the City. If the Regional Board fails to approve the Stipulation for Proposed Order or issue a SEP Order that includes the District's SEP Contribution to the Arundo SEP, or if the Regional Board at any time or for any reason fails to recognize the Arundo SEP as a qualified supplemental environmental project that satisfies the State or Regional Boards' requirements or any of the terms of the Stipulation for Proposed Order or the SEP Order, the City shall return any unexpended portion of the District's SEP Contribution to the District, and this Agreement will terminate.

3. Compliance with SEP Workplan. The City shall perform and complete the Arundo SEP in accordance with the Upper Santa Clara River Watershed Arundo/Tamarisk Removal SEP Workplan, including all SEP Workplan requirements specific to Area E Arundo removal. The City shall fully complete the Arundo SEP in strict accordance with the following time periods:

a) If the Regional Board approves the Arundo SEP and the City receives the District's SEP contribution on or before August 31, 2011, the City shall spend the District's SEP contribution on the Arundo SEP on or before December 2011.

b) If the Regional Board approves the Arundo SEP and the City receives the District's SEP contribution on or before August 31, 2012, the City shall spend the District's SEP contribution of the Arundo SEP on or before December 2012.

If the City fails to spend the District's SEP contribution in accordance with the time periods specified in subsections a) and b), the City shall return any unexpended portion of the District's SEP Contribution to the District within 30 days of receipt of a written demand from the District.

4. SEP Reports. The City shall prepare and provide reports on the performance of the Arundo SEP no less often than quarterly and provide such reports to the District for review. Each quarterly report must contain a list of all Arundo SEP activities since its inception, a list of all Arundo SEP activities during the quarter, and a list of all proposed Arundo SEP work for the following quarter. The report must include an accounting of all Arundo SEP funds expended. The City shall submit each report to the District within 45 days following the end of each calendar quarter. Upon completion of the District's review, the District shall submit the report to the Regional Board.

5. Compliance with State Board Policies. In carrying out the Arundo SEP, the City shall fully comply with the requirements of the State Water Resources Control Board's "Policy on Supplemental Environmental Projects," dated February 3, 2009, and as that policy may be amended from time to time. The City shall also comply with the Regional Board's Supplemental Environmental Projects Fact Sheet, dated July 2009, and as that fact sheet may be amended from time to time.

6. Compliance with Orders of the Regional Board. The City shall expend the District's SEP Contribution and all funds otherwise contributed to the Arundo SEP in accordance with any related orders of the Regional Board, including those orders applicable to either the District or the City.

7. Audits. In the event that the Regional Board audits or requests an audit by any Party or third party, the City shall perform or cooperate with the performance of the audit. The City shall be solely responsible for all costs of any audits.

8. Completion Report. Upon completion of the Arundo SEP, the City shall submit to the District a final completion report declaring the completion of the Arundo SEP and addressing the extent to which the expected outcomes or performance standards were met. The

City shall certify the final completion report under penalty of perjury. Upon completion of the District's review of the final completion report, the District will submit the final completion report to the Regional Board.

9. **Final Accounting.** The District shall prepare and submit a certified, post-completion accounting of the District's SEP Contribution to the Regional Board, if required. The final accounting will also include all other Arundo SEP contributions and expenditures, and the City shall provide any information necessary for the District to prepare and complete the final accounting.

10. **Standard of Performance:** The City shall carry out all requirements under this Agreement in a professional and competent manner. Except as provided in Sections 2 and 3, the City's failure to satisfy any obligation under this Agreement will not result in a loss of funding from the District or the return of District funds, unless the failure is the result of the negligent, willful, or wrongful acts or omissions of the City, its officers, agents, employees or subcontractors while performing work under this Agreement.

11. **Miscellaneous.**

11.1. **Governing Law.** This Agreement shall be administered, construed and enforced according to the laws of the State of California applicable to agreements performed entirely in California.

11.2 **Amendment; Complete Agreement.** All amendments and supplements to this Agreement must be in writing and executed by the District and the City. This Agreement contains the entire agreement and understanding between the Parties concerning the subject matter of this Agreement and supersedes all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, made by any of the Parties concerning the subject of this Agreement.

11.3. **Interpretation.** Each Party has participated in negotiating and drafting this Agreement so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Agreement.

11.4. **Waiver.** No waiver by the District or the City of any of the terms or conditions of this Agreement or any of their respective rights under this Agreement will be effective unless such waiver is in writing and signed by the Party charged with the waiver.

11.5. **Third Parties.** Except as expressly provided in this Agreement, nothing contained in this Agreement will be construed to create any rights in any person or entity not a Party to this Agreement.

11.6. **Duplicate Originals.** This Agreement may be executed as duplicate originals, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

11.7 **Further Assurances.** The City and District shall execute and deliver any

instruments and perform any actions that may be necessary, or reasonably requested, in order to give full effect to this Agreement. The City shall use all reasonable efforts to provide such information, execute such further instruments and documents, and take such action as may be reasonably requested by the District or the Regional Board, not inconsistent with the provisions of this Agreement for the purpose of carrying out the intent of this Agreement.

The Parties are signing this Agreement on the date stated in the introductory clause.

SANTA CLARITA VALLEY SANITATION
DISTRICT OF LOS ANGELES COUNTY

By: Marsha M. Lee
Chairperson **PRO TEM**
JUL 26 2011

ATTEST:

Kimberly S. Compton
Secretary of the Board

APPROVED AS TO FORM

LEWIS BRISBOIS BISGAARD & SMITH
LLP

By: Daniel W. Hyde
District Counsel

CITY OF SANTA CLARITA

By: La. Holo

APPROVED AS TO FORM:

By: Camille
City Attorney

ATTEST:

Susan Caputo
for City Clerk